

UNITED STATES BANKRUPTCY COURT  
For The Western District of Michigan

In Re:

**David L. & Barbara Faye Walker**

**Case No. GK 03-09822**  
**Ch. 7**

Debtor(s).  
\_\_\_\_\_ /

NOTICE TO PARTIES IN INTEREST OF HEARING

**Notice is hereby given that a hearing** will be held at the United States Bankruptcy Court, 114 U.S. Courthouse and Federal Building, 410 W. Michigan Ave., **Kalamazoo, Michigan** on **August 29, 2006 at 10:00 a.m.** to consider and act upon the following matter:

**TRUSTEE'S MOTION FOR AUTHORITY TO SELL REAL PROPERTY  
OF THE STATE AND TO SURCHARGE DEBTOR**

If you want the court to consider your views on this matter, attend the hearing on the date stated above.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)

You or your attorney may wish to file a written response to the motion explaining your position. Any response shall be mailed to the Clerk of the United States Bankruptcy Court, Post Office Box 3310, Grand Rapids, Michigan 49501, and should be received by the Clerk at least 3 (three) days before the above hearing date. A copy of your responses should also be mailed upon the opposing party and his/her attorney.

If you or your attorney do not take these steps, the court may decide to grant the relief sought in the motion and may enter an order granting relief requested.

DANIEL M. LAVILLE, CLERK OF COURT



Dated: July 25, 2006

\_\_\_\_\_  
/s/  
Kathleen M. Trapp, Deputy Clerk

A copy of this notice returned to Stephen L. Langeland, Esq. for service upon the matrix. Court to serve the Buyer's List.

**NOTICE IS HEREBY GIVEN THAT THE COURT MAY**, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an continued or adjourned hearing may be obtained at the clerk's office from the court files or docket.

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

IN RE:

DAVID L. AND BARBARA F. WALKER,  
Debtor.

Case No.: 03-09822

Chapter 7

Hon. James D. Gregg

Date Filed: 08/11/03

Date Converted: 09/13/05

//

**MOTION FOR AUTHORITY TO SELL REAL PROPERTY OF THE ESTATE  
AND TO SURCHARGE DEBTOR**

NOW COMES Stephen L. Langeland, Trustee, moves for a sale of real property of the estate pursuant to 11 U.S.C. §363 as follows:

1. He is the duly appointed and acting Chapter 7 Trustee in this case filed under Chapter 13 on August 11, 2003, which was converted to a case under Chapter 7 on September 13, 2005.

2. Included in the property of this estate is a parcel of real property located at 871 East Britain, Benton Harbor, Michigan 49022.

3. The Trustee has received an offer to purchase the real estate from Dee Ann Jakes, % James Rhoades, ERA Coastal Real Estate, P.O. Box 69, Riverside, Michigan 49084 for the sum of SEVENTEEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$17,500.00) cash.

4. According to the debtor's schedules, the debtor valued the real property at \$22,000.00. The Trustee and his professional Realtor believe that, given the location and condition of the real property, the offer of \$17,500.00 to be a fair offer on the property. The Trustee has listed the property for sale since January, 2006 and this is the only offer received on the property. Since this property is free and clear, the bankruptcy estate would receive gross proceeds of \$17,500.00, which the Trustee believes is in the best interests of the estate.

5. That it is in the best interest of this estate and its creditors that the said real property be offered for sale at public auction in open court at the earliest possible date, subject to the following terms and conditions:

A) PROPERTY: The real property is located at 871 East Britain, Benton Harbor, Michigan 49022 and are legally described as follows:

**The City of Benton Harbor, County of Berrien, State of Michigan:**

**Lot 15 Blk 5 Fair Ground Add to the City of Benton Harbor**

B) BIDDING: Bidding will commence with the bid of Dee Ann Jakes, % James

Rhoades, ERA Coastal Real Estate, P.O. Box 69, Riverside, Michigan 49084 in the amount of \$17,500.00 with subsequent bids in increments of not less than \$1,000.00.

Sale shall be on a cash basis, with the successful bidder, other than Dee Ann Jakes being required to make a non-refundable deposit with the Trustee in the sum of \$2,500.00 in cash or certified funds at the conclusion of the bidding in open court. No contingent bids shall be received. Closing shall take place as soon as possible at a date mutually agreed upon by the Trustee and the Purchaser, and the total balance of the bid price shall be paid at closing. In order to expedite closing as soon as possible, the stay provisions of Fed.R.Bankr.P.6004(g) shall be set aside as null and void.

Any prospective bidder must submit evidence of financeability in the form of bank letter of credit or letter confirming loan approval to the Trustee no later than three (3) days prior to the sale date in order to qualify to bid at the sale.

C) TERMS: The real property will be sold on an "as is," "where is" basis, without representation or warranty, express or implied, of any kind, nature or description including, but not limited to, any warranty about description or marketability, merchantability, or usability or a fitness for any purposes.

The Trustee shall not be required to inspect or test or report on the condition of the real property or the operability of the real property or the existence of any possible defects in the real property.

All real estate taxes which are a lien against the described real property shall be paid out of the sale proceeds as an expense of sale. Any tax which becomes a lien on said real property after the date of sale shall be paid by the purchaser, and the 2006 real estate taxes shall be prorated to the date of closing. The purchaser will receive title insurance. The sale shall be consummated by the delivery to the purchaser of a Trustee's Deed without warranty of title.

The described real property shall be sold free and clear of all liens, encumbrances, and/or claims therein, with said liens, encumbrances, and/or claims attaching to the sale proceeds, in the same order of validity, rank, and priority as now exists in the said real property. Any and all liens, claims, and encumbrances shall be discharged when a copy of a subsequent Order Confirming Sale entered by this Court is recorded along with the Trustee's Deed in the Register of Deeds Office.

The expenses of custody, protection, insurance of the real property, as well as expenses of the sale, including administrative and all legal expenses of these proceedings relating to the protection and sale of said real property shall be

charged against the sale proceeds with priority over all claims.

D) REALTORS COMMISSION: The offer which the Trustee has received is subject to a commission of \$3,000.00 to be paid to Re-Max Advantage, Realtor conditioned on the consummation of the sale. The Realtors retained by the Trustee are Roxanne Cantu and Douglas R. Johan.

E) INSPECTION: Arrangements for inspection of the real property to be sold can be made by contacting Roxanne Cantu, Re-Max Advantage, Realtor, 7127 South Westnedge Avenue, Portage, Michigan 49002, telephone 269/329-1053.

6. Any person objecting to the validity, proprietary or legality and/or having any objection of any kind to the sale as described herein, shall file a written objection to the sale on or before five (5) business days before the date set for the hearing on this Motion and simultaneously serve copies on the attorney for the Trustee and the Trustee at the address listed in this Motion and, in accordance with Federal Rule of Bankruptcy Procedure 6004(b).

7. The Trustee reserves the right to withdraw this Motion at any time prior to completion of the hearing thereon.

8. The Trustee has recently become aware that since the filing of the bankruptcy petition, the debtors have rented this property to a tenant without the consent or knowledge of the Trustee. The Trustee has been advised that, since the date of filing, the debtor has been leasing the property at the rate of \$650.00 per month. This is property of the bankruptcy estate and the debtor was not entitled to those funds. As of July 1, 2006, the debtor has received ten (10) monthly post-petition rent payments for a total of \$6,500.00. Although the Trustee has demanded those funds be turned over by the debtors to the Trustee as property of the bankruptcy estate, the debtors have failed, refused and neglected to do so. The debtors have claimed an exemption in the real property in the amount of \$6,604.00. The Trustee asks that this Court allow the Trustee to surcharge the debtor the sum of \$6,500.00, which represents post-petition rents collected by the debtors to which they were not entitled. The Trustee asks that the surcharge be allowed against the debtor's claim of exemption in the real property.

9. The Trustee requests that the Notice of Hearing and a copy of the Motion be served by ordinary mail upon the following persons:

Stephen L. Langeland, 350 East Michigan Avenue, Suite 130, Kalamazoo, Michigan 49007;

David L. And Barbara F. Walker, P.O. Box 1936, Hammond, LA 70404-1936;

Robert J. Pleznac, Esq., 622 West Lovell Street, Kalamazoo, MI 49007;

Roxanne Cantu', RE/MAX-Advantage Realtors, 7127 South Westnedge Avenue, Portage, Michigan 49002;

Douglas R. Johan, RE/MAX-Sunset Coast, 4507 Red Arrow Highway, Stevensville, Michigan 49127;

Office of the United States Trustee, 330 Ionia NW, Suite 202, Grand Rapids, Michigan 49053;  
and  
Dee Ann Jakes, % James Rhoades, ERA Coastal Real Estate, P.O. Box 69, Riverside, MI 49084.

WHEREFORE, the Trustee requests that this Court enter an Order Confirming Sale of the within real property as set forth above, to Dee Ann Jakes, % James Rhoades, ERA Coastal Real Estate, P.O. Box 69, Riverside, Michigan 49084 for the sum of \$17,500.00 or to such other purchaser for such additional sums as may be bid at the hearing in open Court and that Stephen L. Langeland, Trustee be authorized to take such steps, make such payments, and execute such documents as reasonably necessary to implement and effectuate said sale. The Trustee further prays for authorization to surcharge the debtor in the amount of \$6,500.00 against the debtor's claim of exemptions in the real property and that the Court grant such further relief as may be just and equitable under the circumstances.

Dated: 07/20/06

/s/  
Stephen L. Langeland, Trustee  
350 East Michigan Avenue, Suite 130  
Kalamazoo, MI 49007  
269/382-3703